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E.O. 12958: N/A

TAGS: PREL PHUM BK HR SR NL ICTY

SUBJECT: ICTY: REGISTRY SEEKS AGREEMENTS ON SENTENCING
ENFORCEMENT AND WITNESS RELOCATION

REF: THE HAGUE 1831

¶1. (SBU) Summary: In a July 28 meeting with Ambassador Sobel, Hans Holthuis, the Registrar of the International Criminal Tribunal for the Former Yugoslavia (ICTY), sought USG assistance with respect to the enforcement of sentences and the relocation of witnesses. Holthuis specifically requested that the USG consider negotiating a sentencing enforcement agreement with the ICTY, under which the United States would agree to let ICTY-convicted individuals serve their sentences in U.S. prisons. He also asked whether the United States might be in a position to consider an agreement for the relocation of witnesses, though he acknowledged that the current ad hoc approach has proven capable of meeting ICTY needs. End Summary

¶2. (SBU) As the ICTY looks ahead to the conclusion of its trials and appeals (2008 and 2010 respectively), it is reaching out to governments for assistance in two key areas: enforcing sentences and relocating witnesses. Registrar Hans Holthuis has been visiting other Embassies in The Hague and has received "positive" indications from several new European Union states (including the Baltics, Hungary and Slovenia) that they may consider entering into agreements on both issues.

¶3. (SBU) The Registrar's request for sentencing enforcement assistance stems from the increase in sentencing judgments issued by the Tribunal, and the projected further escalation in such judgments as the ICTY moves toward 2010 (the target date for the conclusion of all appeals under the completion strategy). The Scheveningen prison, in which fifty-nine ICTY indictees are detained pending trial, appeal or final sentencing judgment, is neither designed nor permitted to be a permanent holding facility for the service of sentences. Thus, the ICTY looks to governments to make their prisons available to hold convicted indictees. In all but one case, the ICTY arranges such transfers in accordance with agreements reached with states. The prisoner transfers are conducted under the auspices of the ICTY, and the detention of convicts is under host state laws and regulations. At present the Tribunal has sentencing enforcement agreements with Denmark, Spain, France, Sweden, Austria, Norway, Finland, Italy and the United Kingdom, and one exchange of letters permitting ad hoc transfers with Germany.

¶4. (SBU) ICTY informs us that the following states have enforced or are currently enforcing sentences of the Tribunal:

State	Number/Identity of Convicts
Austria	2/Dosen, Sikirica
Finland	4/Aleksovski, Furundzija, Delic, Landzo
Germany	2/Tadic, Kunarac
Italy	1/Jelisic
Norway	3/Erdemovic, Kovac, Vulkovic
Spain	3/Todorovic, Josipovic, Santic
Sweden	1/Plavsic

France is due to accept its first prisoner transfer shortly. Embassy also understands that the UK may accept a prisoner soon. Two further convicts were released directly from the Tribunal, having served their sentences under ICTY detention: Kolundzija, Simic. A further indictee, Tihomir Blaskic, may be released directly from the ICTY soon, since his 45 year sentence was reduced today to nine years, most of which he has already served as a detainee in Scheveningen.

¶5. (SBU) Though based on a model enforcement agreement, some agreements reflect specific state requirements. For instance, Germany's lack of assent to a formal agreement has kept its cooperation efforts ad hoc. (Comment: According to Holthuis, this ad hoc system is redundant as potential host States can always deny a request from the Tribunal to house convicts. End Comment). Notably, the Spanish agreement differs regarding the monitoring of the facilities in which transferred convicts are held. According to the model agreement, host States allow the International Committee for the Red Cross (ICRC) to inspect its prison facilities "at any

time," with the frequency of the visits determined by ICRC. Spain modified this requirement, agreeing to set up a four member "Parity Commission" in which two members of the Tribunal and two members of the Spanish government work together in inspecting facilities at specified intervals.

16. (SBU) Witness relocation, usually provided for witnesses whose testimony endangers their safety, has been arranged on a few occasions by the USG on an ad hoc basis. Given the nature of threats, these offers have included not just witnesses, but also their families. The USG has used both protected witness status and refugee status as a mode of entry into the country. Though this has only been provided in a few cases, Embassy is currently working with the Department on possibly relocating the family of a particular witness (reftel).

17. (SBU) Comment: The ICTY requires additional agreements in order to meet the increasing number of indictees convicted. Similarly, the increased number of trials means an increase in the number of witnesses who may need relocation. In both situations, ad hoc approaches are less efficient and less effective than a framework agreement approach. That said, both requests raise special issues involving legal capacity and financial and bureaucratic support. Embassy believes that both of the Registrar's requests deserve careful consideration. End Comment.

SOBEL